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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 RICK J. HINRICHSSEN, ANNA
12 HINRICHSSEN, HOLLY COX,

13 Plaintiffs,

14 v.

15 QUALITY LOAN SERVICE
16 CORPORATION; DEUTSCHE BANK
17 NATIONAL TRUST COMPANY, AS
18 TRUSTEE FOR THE HOLDERS OF
19 NEW CERNTRY HOME EQUITY
20 LOAN TRUST, SERIES 2005-A, ASSET
21 BACKED PASS-THROUGH
22 CERTIFICATES; DOES 1-10,
23 INCLUSIVE,

24 Defendants.

25

AND RELATED COUNTERCLAIM.
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Case No.: 16cv0690 DMS (BLM)

**ORDER DENYING MOTION TO
DISMISS COUNTERCLAIM**

25 This case comes before the Court on *pro se* parties Rich Hinrichsen, Anna
26 Hinrichsen and Holly Cox's motion to dismiss the Counterclaim. Deutsche Bank National
27 Trust Company ("DBNTC") and Bank of America, N.A. ("BoFA") filed an opposition to
28

1 the motion,¹ and the Hinrichsens and Ms. Cox filed a reply. For the reasons discussed
2 below, the Court denies the motion.

3 I.

4 BACKGROUND

5 The facts of this case are set out in detail in this Court's January 5, 2017 Order
6 Granting Motion for Leave to File Amended Answer and Counterclaim and to Add New
7 Parties. Since that Order issued, DBNTC and BofA filed an Amended Answer and
8 Counterclaim against the Hinrichsens, Ms. Cox, Pacifico Property Trust, The Rick and
9 Anna Hinrichsen Property Trust, Steven Lucore, Sr., Judy Lucore and Hayven Arizona
10 Finance alleging claims for (1) fraud in the reconveyance of the lien, (2) fraud in the further
11 encumbrance of the property, (3) quasi-contract, (4) declaratory relief, (5) rescission and
12 (6) cancellation. In response to the Counterclaim, the Hinrichsens and Ms. Cox filed the
13 present motion to dismiss.

14 II.

15 DISCUSSION

16 The Hinrichsens and Ms. Cox move to dismiss the Counterclaim in its entirety.
17 DBNTC and BofA oppose the motion, and request leave to amend if the motion is granted.

18 In *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell Atlantic Corp. v. Twombly*, 550
19 U.S. 544 (2007), the Supreme Court established a more stringent standard of review for
20 12(b)(6) motions. To survive a motion to dismiss under this new standard, "a complaint
21 must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is
22 plausible on its face.'" *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 570). "A claim
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25 ¹ The Hinrichsens and Ms. Cox assert the opposition brief was untimely filed. In support
26 of this argument, they cite "Civil Local Rule 7-9," (Reply at 2), but there is no such Local
27 Rule. Contrary to the Hinrichsens' argument, Civil Local Rule 7.1.e.2 states opposition
28 briefs must be filed "not later than fourteen (14) *calendar* days prior to the noticed hearing."
Civil Local Rule 7.1.e.2. The opposition brief was filed by that deadline, and was therefore
timely filed.

1 has facial plausibility when the plaintiff pleads factual content that allows the court to draw
 2 the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing
 3 *Twombly*, 550 U.S. at 556).

4 “Determining whether a complaint states a plausible claim for relief will ... be a
 5 context-specific task that requires the reviewing court to draw on its judicial experience
 6 and common sense.” *Id.* at 679 (citing *Iqbal v. Hasty*, 490 F.3d 143, 157-58 (2d Cir. 2007)).
 7 In *Iqbal*, the Court began this task “by identifying the allegations in the complaint that are
 8 not entitled to the assumption of truth.” *Id.* at 680. It then considered “the factual
 9 allegations in respondent’s complaint to determine if they plausibly suggest an entitlement
 10 to relief.” *Id.* at 681.

11 Here, the first and primary argument in support of the motion to dismiss is that the
 12 2012 reconveyance of the property is “irrelevant” because in 2006 the Hinrichsens
 13 rescinded their mortgage under Truth in Lending Act (“TILA”).² The Hinrichsens have
 14 raised similar arguments in previous briefs, and as indicated in the Court’s Order granting
 15 BofA’s motion for leave to intervene, the effect of the Hinrichsens’ alleged rescission of
 16 their mortgage under TILA “is an issue that remains to be determined in this case.” (Docket
 17 No. 78 at 5.) Unless and until that issue is determined, the 2012 reconveyance of the
 18 property is not “irrelevant” to this case, and the Hinrichsens’ argument to the contrary does
 19 not warrant dismissal of the Counterclaim.

20 The only other argument raised in the motion is that the fraud claims are untimely.
 21 Specifically, the Hinrichsens and Ms. Cox assert “the statute of limitations for a cause of
 22 action under Cal. Civ. Code § 1719 has expired.” (Mem. of P. & A. in Supp. of Mot. at 5.)
 23 But, there is no counterclaim under California Civil Code § 1719. To the extent the
 24 Hinrichsens and Ms. Cox are asserting the fraud claims actually alleged in the
 25 Counterclaim are time-barred, DBNTC and BofA have alleged facts that support
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 28 ² Indeed, this is the primary argument in support of dismissal of each of the claims alleged
 in the Counterclaim.

1 invocation of the discovery rule. (*See* Answer and Counterclaim ¶ 41; Opp'n to Mot. at
2 16-20.) Thus, the fraud claims are not subject to dismissal at this stage of the case on the
3 ground they are untimely.

4 **III.**

5 **CONCLUSION**

6 For the reasons set out above, the Court denies the motion to dismiss the
7 Counterclaim.

8 **IT IS SO ORDERED.**

9 Dated: March 30, 2017

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11 Hon. Dana M. Sabraw
12 United States District Judge
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